

THIRD READINGS SUMMARY SHEET

ZONING CASE NUMBER: C14-2008-0099 - 1600 Block of East MLK

REQUEST: Approve second/third readings of an ordinance amending Chapter 25-2 of the Austin City Code by rezoning property locally known as 1600, 1602, 1604 and 1606 E. Martin Luther King Jr. Boulevard (Upper Boggy Creek Watershed) from family residence-neighborhood plan (SF-3-NP) combining district zoning to neighborhood commercial-mixed use-vertical mixed use building-conditional overlay-central urban redevelopment-neighborhood plan (LR-MU-V-CO-CURE-NP) combining district zoning. Staff Recommendation: To grant neighborhood commercial-mixed use-vertical mixed use building-conditional overlay-neighborhood plan (LR-MU-V-CO-NP) combining district zoning. Planning Commission Recommendation: To grant neighborhood commercial-mixed use-vertical mixed use building-conditional overlay-central urban redevelopment-neighborhood plan (LR-MU-V-CO-CURE-NP) combining district zoning.

ISSUES: The Blackland Neighborhood Association and the Blackland Community Development corporation support the request. A valid petition of 26.39% exists in opposition to the request.

APPLICANT: E-MLK Properties, L.L.C.

AGENT: Ryan Diepenbrock, PSW Real Estate.

DATE OF FIRST READING: December 11, 2008

DATE OF SECOND READING: January 15, 2009

CITY COUNCIL HEARING DATE: April 2, 2009

CITY COUNCIL ACTION:

The second reading of the ordinance to approve LR-MU-V-CO-CURE-NP zoning approved on Mayor Pro Tem McCracken's motion, Mayor Wynn's second on a 4-3 vote. Those voting aye were: Mayor Wynn, Mayor Pro Tem McCracken and Council Members Cole and Shade. Those voting nay were: Council Members Leffingwell, Martinez and Morrison.

CASE MANAGER: Robert Heil 974-2330

e-mail address: robert.heil@ci.austin.tx.us

**ZONING CHANGE AND NEIGHBORHOOD PLAN AMENDMENT
REVIEW SHEET**

CASE#: NPA-2007-0012.02 and C14-2008-0099

PC DATE: July 22, 2008
November 25, 2008
December 9, 2008

ADDRESS: 1600, 1602, 1604 and 1606 E. Martin Luther King Blvd

APPLICANT/OWNER: E-MLK Properties, LLC

AGENT: PSW Real Estate (Ryan Diepenbrock)

AREA: 1.00 acre

LAND USE FROM: Single Family

TO: Neighborhood Mixed-Use

ZONING FROM: SF-3-NP

TO: LR-MU-V-CO-CURE-NP (see below)

STAFF RECOMMENDATION:

Staff recommends

- 1) Neighborhood Mixed Use Land Use, and
- 2) Neighborhood Commercial – Mixed Use – Vertical Mixed Use – Conditional Overlay (LR-MU-V-CO-NP) combining district zoning. The conditional overlay would include limit the development to less than 2000 daily vehicle trips.

PLANNING COMMISSION RECOMMENDATION:

July 22, 2008: Approved staff recommendation for both the neighborhood plan amendment and the zoning change on a vote of 6-2-1.

NOTE: This case was originally heard by the Planning Commission on July 22, 2008. After that hearing, the applicant amended the zoning portion of his request, and the new zoning request was re-presented to Planning Commission. The neighborhood plan amendment portion of the request was not reconsidered.

November 25, 2008: Left open the public hearing and postponed action until December 9, 2008. (8-0-1) (Cavazos abstaining.) The reason for the postponement was to allow representatives of the surrounding Blackland Neighborhood to be present, and to get additional input from the City's Neighborhood Housing and Community Development Department.

December 9, 2008: Approved the applicant's request of LR-MU-V-CO-CURE-NP (8-0). The Commission also recommended that the private agreement between the applicant and Blackland Community Development Corporation specify that the affordability period be 99 years for purchased units and 40 years for rental units for those units included in the affordable housing portions of their agreement.

DEPARTMENT COMMENTS:

Originally, the applicant had requested to change the Future Land Use Map designation from Single Family to Neighborhood Mixed Use, and to change the zoning from single family residence-neighborhood plan (SF-3-NP) to neighborhood commercial-mixed use-vertical mixed use-conditional overlay-central urban redevelopment area - neighborhood plan (LR-MU-V-CO-CURE-NP). This request was presented to the Planning Commission on July 22, 2008.

This request was amended to a base zoning of neighborhood commercial (LR), and the addition of the Central Urban Redevelopment Area (CURE) overlay. Additionally, the applicant amended his neighborhood plan amendment request, to Neighborhood Mixed Use, which matches the recommendation of staff and the Planning Commission. The neighborhood plan amendment does not need to be reconsidered, however, the new zoning request is being presented for public hearing and Commission recommendation.

The applicant's zoning request is Neighborhood Commercial – Mixed Use – Vertical Mixed Use – Conditional Overlay – Central Urban Redevelopment – Neighborhood Plan (LR-MU-V-CO-CURE-NP) combining district zoning.

The requested **Conditional Overlay** includes:

- 3 Star Green Building Standards
- Maximum of 2000 daily vehicle trips
- Residential parking garage access will be off of MLK
- Retail parking access will be off of Leona
- Commercial or Retail space limited to 2,499 square feet on this site inclusive of exterior seating
- Residential Units limited to 59 unless written agreement with Blackland Neighborhood Association allowing additional. Parking constraints will limit any total to no more than 66 units

Additionally, the applicant has requested as part of **the CURE overlay**:

- No minimum site area requirements
- No minimum floor to area ratio
- No maximum building coverage
- Setback requirements comparable to those required by a Vertical Mixed Use (V) overlay
- Maximum impervious cover of 95%
- Height -
 - a. For mixed use retail development a height limit of 3 stories or 40' comprised of 38' for the building and 2' additional for rooftop solar energy and mechanical equipment. Retail development will be limited to a maximum of 2499sqft (inclusive of exterior patio seating) and located on the ground floor of the southeast corner of the site
 - b. For residential use, no more than 4 stories with an average height not to exceed a total of 50' comprised of 48' average building height plus 2' for rooftop solar energy and mechanical equipment. For purposes of calculating the average height the shorter height must begin at the eastern building setback on the 1606 MLK property.
- Commercial Design Standards: ground-floor commercial space and glazing requirements will be waived in favor of residential space. All other design standards to remain.

The applicant has also indicated his intent to provide affordable housing as part of the project – a minimum of 6 units affordable to families earning 60% or less of the median family income. Additional details are included in the attached agreement.

The stated intent is to construct a mixed-use project on a vacant one acre site located along E. Martin Luther King Blvd., which is a core transit corridor. The stated intent is to construct a mixed use project, which would consist of 10,000 sq. ft. of retail space, and approximately 35 to 50 units of residential condominiums or apartments in a building that would be three or four stories tall, or approximately 55 ft. in height.

Based on adjacent single-family houses, and the size of the subject property (one acre), staff believes that Neighborhood Mixed Use, rather than Mixed Use is more consistent with the Land Use recommendations in the Upper Boggy Creek Neighborhood Plan. Community Retail (LR) zoning is the highest base commercial zoning category permitted with the Neighborhood Mixed Use Land Use category and is the staff recommendation for base zoning for the site.

The UBC Planning Contact Team also recommends Neighborhood Mixed Use for this project. There has been a petition filed against the request including signatures of property owners representing 36.42% of the land with 200 feet of the subject tract. Since the petition was validated, one property owner, representing 6.03% of the property no longer opposes the project, and other property owners have indicated they no longer object but at this time have not formally removed their names from the petition. If this signer is removed the petition would represent owners of 30.21% of property within 200 feet.

EXISTING LAND USE AND ZONING

	ZONING	LAND USES
<i>Site</i>	SF-3-NP	Vacant and Single Family Homes
<i>North</i>	SF-3-NP	Vacant
<i>South</i>	P-H-NP	Cemetery
<i>East</i>	MF-3-NP	Single Family Homes
<i>West</i>	SF-3-NP	Vacant, Parking and Single Family Homes

NEIGHBORHOOD PLAN: The property lies within the Upper Boggy Neighborhood Plan (UBCNP) adopted on August 1, 2002. The future land use map for this neighborhood plan designates this site for single family residential use.

TIA: A traffic impact analysis was waived for this case because the applicant agreed to limit the intensity and uses for this development. If the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day. [LDC, 25-6-117]

WATERSHED: Boggy Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

REGISTERED COMMUNITY ORGANIZATIONS:

- Mueller Neighborhood Coalition
- Homebuilders' Association of Greater Austin
- Anberly Airport Association
- Homeless Neighborhood Association
- Davis Thompson American Mill Neighborhood Association
- Upper Boggy Creek Neighborhood Planning Contact Team
- Sentral Plus East Austin Koalition (SPEAK)
- Swede Hill Neighborhood Association
- Blackland Neighborhood Association
- Austin Neighborhood Council
- People Organized to Defend Earth and Her Resources (PODER)
- Blackland Community Development Corporation
- Organization of Central East Austin Neighborhoods (OCEAN)

SCHOOLS: (AISD)

Campbell Elementary Kealing Middle McCallum High

ABUTTING STREETS:

Name	ROW	Pavement	Classification	Daily Traffic
MLK Blvd.	75'	40'	Arterial	14,390
Concho Street	13'	unpaved	Local	NA
Leona Street	56'	30	Local	NA

PUBLIC MEETINGS: A neighborhood meeting on this case was held on July 2, 2008.

Invitations were sent to the UBC Planning Team (the contact team) and property owners located within 500 feet of the proposed plan amendment. (Notes from this meeting are attached to this report.) The UBC Planning Team stated that although they still preferred a Single Family future land use designation along this portion of E. MLK Blvd., that they could also support Neighborhood Mixed Use if the project was compatible to adjacent single-family land uses.

CITY COUNCIL DATE: ACTION:

August 7, 2008	Postponed to August 21, 2008
August 21, 2008	Postponed to September 25, 2008
September 28, 2008	Postponed to October 16, 2008 at the request of the applicant.
October 16, 2008:	Pulled from the agenda at the request of the applicant. The zoning request was amended and the case returned to Planning Commission.
December 11, 2008	Public hearing closed and Neighborhood Mixed Use Land Use and LR-MU-V-CO-CURE-NP zoning both approved on first reading (5-2). Those voting aye were: Mayor Wynn, Mayor Pro Tem McCracken, and Council Members Cole, Martinez, and Shade. Those voting nay were: Council Members Leffingwell and Morrison.

January 15, 2009: The second reading of the ordinance to change the land use designation to neighborhood mixed use approved on Mayor Pro Tem McCracken's motion, Mayor Wynn's second on a 4-3 vote. Those voting aye were: Mayor Wynn, Mayor Pro Tem McCracken and Council Members Cole and Shade. Those voting nay were: Council Members Leffingwell, Martinez and Morrison.

March 12, 2009 Postponed to April 2, 2009 at the request of the applicant.

April 2, 2009:

ORDINANCE READINGS: 1st 12/11/08 2nd 1/15/2009 3rd

ORDINANCE NUMBER:

NEIGHBORHOOD PLANNING CASE MANAGER: Kathleen Fox

PHONE: 974-7877

Email: kathleen.fox@ci.austin.tx.us

ZONING CASE MANAGER: Robert Heil

PHONE: 974-2330

E-mail: robert.heil@ci.austin.tx.us

For the best possible print results, click the printer icon on the Live Search Maps page.

Location result for

Austin, Texas, United States



STAFF RECOMMENDATION:

Staff recommends

- 1) Neighborhood Mixed Use Land Use, and
- 2) Neighborhood Commercial – Mixed Use – Vertical Mixed Use – Conditional Overlay (LR-MU-V-CO-NP) combining district zoning. The conditional overlay would include:
 - Development be listed to less than 2000 daily vehicle trips
 - Prohibit vehicle access to Leona (access to Leona could be provided if the applicant completes a neighborhood traffic analysis).

BASIS FOR RECOMMENDATION:

Based on adjacent single-family houses, and the size of the subject property (one acre), staff believes that Neighborhood Mixed Use, rather than Mixed Use is more consistent with the Land Use recommendations in the Upper Boggy Creek Neighborhood Plan. The UBC Planning Contact Team also recommends Neighborhood Mixed Use for this project.

ANALYSIS:

The Future Land Use Map of the UBCNP recommends ‘**Single Family**’ for this portion of E. Martin Luther King Blvd.

Staff Comments: While the FLUM identifies this section of E. Martin Luther King Blvd. as Single Family, the text in the Land Use Section of the UBC Plan supports mixed use along E. Martin Luther King Blvd. (see below)

MLK BOULEVARD CORRIDOR (pg. 33 UBC Plan)

Objective 2.1: MLK Boulevard will become a mixed-use corridor that provides services and shopping in a neighborhood-friendly fashion. The streetscape along the MLK Boulevard Corridor—the southern boundary of the planning area—should be pedestrian friendly and promote a safe environment for pedestrians. This includes awnings on the fronts of buildings, street trees, benches, convenient trash bins, etc. Encourage new commercial or mixed-use development along the MLK Boulevard Corridor to locate parking to the side or at the rear of the structure. If in the future the University of Texas decides to locate a parking garage on its property west of Comal Street between MLK Boulevard and Manor Road, the affected neighborhoods and Upper Boggy Creek Neighborhood Planning Team should work with the University of Texas to develop a pedestrian and neighborhood-friendly facility.

- **Action Item 7.** Include a Mixed-Use Combining District and allow the Smart Growth infill option of Mixed-Use Building on all commercially zoned property along MLK Boulevard and limit the height of commercial buildings along the corridor to **forty (40) feet** (three stories).

Staff comments: The developer wants to build a 55 ft. tall mixed use building along E. Martin Luther King Blvd. The applicant’s 55 ft. tall building appears not comply with the UBC Plan’s desire to keep mixed use development to no taller than 40 ft. tall along E. Martin Luther King Jr. Blvd., and would not match the scale or height of nearby residential uses. The neighborhood also expressed concern during a July 2, 2008, neighborhood meeting that a mixed use project containing up to 50 units of residential

housing and 10,000 sq. ft. of retail could not accommodate all the parking on-site and worsen the street parking situation in the area.

Goal Three: HOUSING (pg. 44) - Promote the rehabilitation of existing housing and construction of new housing to be compatible with the surrounding neighborhood and architecture for a variety of income levels

- **Action Item 21.** The Blackland Community Development Corporation and other providers of affordable housing should continue to develop affordable housing for low-income families in the area defined by Leona Street, Manor Road, Chestnut Avenue and MLK Boulevard. Affordable housing for these purposes is defined as sixty percent of Austin area median family income. To this goal, the Upper Boggy Creek Neighborhood Planning Team supports the granting of variances to allow these parties to provide affordable housing. *(BOA, Neighborhoods)*

Staff comments: The applicant has held several meetings with the Blackland Neighborhood Association, who expressed concern that this project could reduce the amount of affordable housing located on or near E. Martin Luther King Blvd. However, the applicant has stated that they are committed to including an affordable housing element in their mixed use project (See attached neighborhood meeting notice and planning contact team minute)

Staff's interpretation of the UBC Neighborhood Plan's recommendations above is that the Plan does not support a mixed use project over 40 ft. tall along E. Martin Luther King Blvd. because of the neighborhood's desire to keep commercial and mixed use project in scale with the neighborhood. Based the UBC Plan, the UBC Planning Team's recommendations, nearby single family houses, and the size of the subject property, staff believes that Neighborhood Mixed Use rather than Mixed Use is more appropriate for this portion of E. Martin Luther King Blvd.

Site Plan

This site is located within the boundaries of the Central Urban Redevelopment (CURE) Combining District and is subject to § 25-2-163 of the Land Development Code. Additional comments will be made when the site plan is submitted.

Martin Luther King Blvd is a Core Transit Corridor, and any new development is subject to Subchapter E. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.

The site is subject to compatibility standards. Along the north, east and west property lines, the following standards apply:

- No structure may be built within 15 feet of the SF-3 zoned property lines.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the SF-3 zoned property lines.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the SF-3 zoned property lines.

- No parking or driveways are allowed within 25 feet of the SF-3 zoned property lines.
- A landscape area, fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.
- Additional design regulations will be enforced at the time a site plan is submitted.

Transportation

If the requested zoning is recommended for this site, 35 feet of right-of-way should be dedicated from the centerline of Concho Street in accordance with the Transportation Criteria Manual, in order to accommodate traffic anticipated to be generated by this site. LDC, 25-6-55; TCM, Tables 1-7, 1-12.

A traffic impact analysis was waived for this case because the applicant agreed to limit the intensity and uses for this development. If the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day. [LDC, 25-6-117]

A Neighborhood Traffic Analysis is required and will be performed for this project by the Transportation Review staff. Results will be provided in a separate memo. LDC, Sec. 25-6-114. FYI: The Neighborhood Traffic Analysis can be waived if the applicant agrees to restrict access to Martin Luther King, Jr. Boulevard only.

Other Information

- There are existing sidewalks along both sides of MLK Blvd.
- MLK Blvd. is classified in the Bicycle Plan as a Priority 1 bike route.
- Capital Metro bus service Route 18 is available along MLK Blvd.

Additional comments may be provided when more complete information is obtained.

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Boggy Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

According to flood plain maps, there is no flood plain within the project area.

At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Water and Wastewater

The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing the water and wastewater utility improvements, offsite main extensions, system upgrades, utility relocation, and abandonment. The water and wastewater plan must be in accordance with the City of Austin utility design criteria. The water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.



MEMORANDUM

TO: Robert Heil, Case Manager, NPZD
CC: Carter Shanklin
FROM: Amber Mitchell, WPDR
DATE: December 8, 2008
SUBJECT: Neighborhood Traffic Analysis for 1600 MLK
Zoning Case: 1600 MLK C14-2008-0099

The Transportation Section has performed a neighborhood traffic impact analysis for the above referenced case and offers the following comments.

The site is located in east Austin on Martin Luther King Jr. Blvd between Concho and Leona Streets near the intersection of IH and Martin Luther King Jr. Blvd. Currently zoned Family Residential Neighborhood Plan (SF-3-NP), the request is for Neighborhood Commercial Vertical Mixed Use Conditional Overlay Central Urban Redevelopment Combining District Neighborhood Plan (LR-MU-V-CO-CURE-NP). The applicant proposes a mixed-use development with ground floor retail and multi-family residences above. Surrounding the tract to the north, east, and west is single family, and to the south is a cemetery.

Roadways

Leona forms the eastern boundary of this site and is classified as a local street with 56 feet of right-of-way and 30 feet of pavement. Concho Street forms the western boundary of this site and is classified as a local street but is in substandard condition, essentially functioning as an alley with 15 feet of right-of-way and 10 feet of pavement. The site is bound to the north by an alley with 20 feet of right-of-way and 11 feet of pavement. Martin Luther King Jr. Blvd is the southern boundary of the property and is classified as an undivided major arterial with 77 feet of right-of-way and 38 feet of pavement. According to Section 25-6-114 of the Land Development Code, both Leona Street and Concho Street are considered local streets because at least 50 percent of the frontage within 1,500 feet of the subject tract has an urban family residential district (SF-5) or more restrictive zoning designation.

Trip Generation and Traffic Analysis

Based on the ITE's publication Trip Generation, and assuming the site develops to the maximum intensity allowed under the proposed zoning classification (without consideration of setbacks, environmental constraints or other site characteristics) the proposed development at the time of site plan may generate an approximate average of 2,359 (vpd) per site. However, the applicant has agreed to a conditional overlay of 2,000 trips for the site. The trip generation for the subject tract is summarized in Table 1.

Table 1. Trip Generation		
LAND USE	SIZE	VPD
Mixed-Use	Not determined	2,000
TOTAL		2,000

Table 2 represents the expected distribution of the 2,000 trips:

Street	Trip Distribution
MLK Jr. Blvd	65%
Leona St	15%
Concho St	5%
Total	100%

Table 3 represents a breakdown of background traffic*, proposed site traffic, and total traffic after development along Concho Street, Leona Street, and Martin Luther King Jr. Blvd.

Street	Pavement Width (Ft)	Maximum Desirable Volume (vpd)	Background Traffic (vpd)*	Proposed Site Traffic (vpd)	Overall Traffic (vpd)
Concho Street	10	1,200	66	100	166
Leona Street	30	1,800	900	300	1,200
MLK Jr. Blvd	38	N/A	16,027	1300	17,327

*Background traffic includes current traffic levels as well as recently approved zoning cases and zoning cases under consideration that could increase traffic on the streets under study.

The Land Development Code specifies desirable operating levels for certain streets in section 25-6-116. These levels are as follows: A residential local or collector street with a pavement width of less than 30' should carry 1,200 vehicles per day or less and a residential local or collector street with a pavement width between 30' and 40' should carry up to 1,800 vehicles per day.

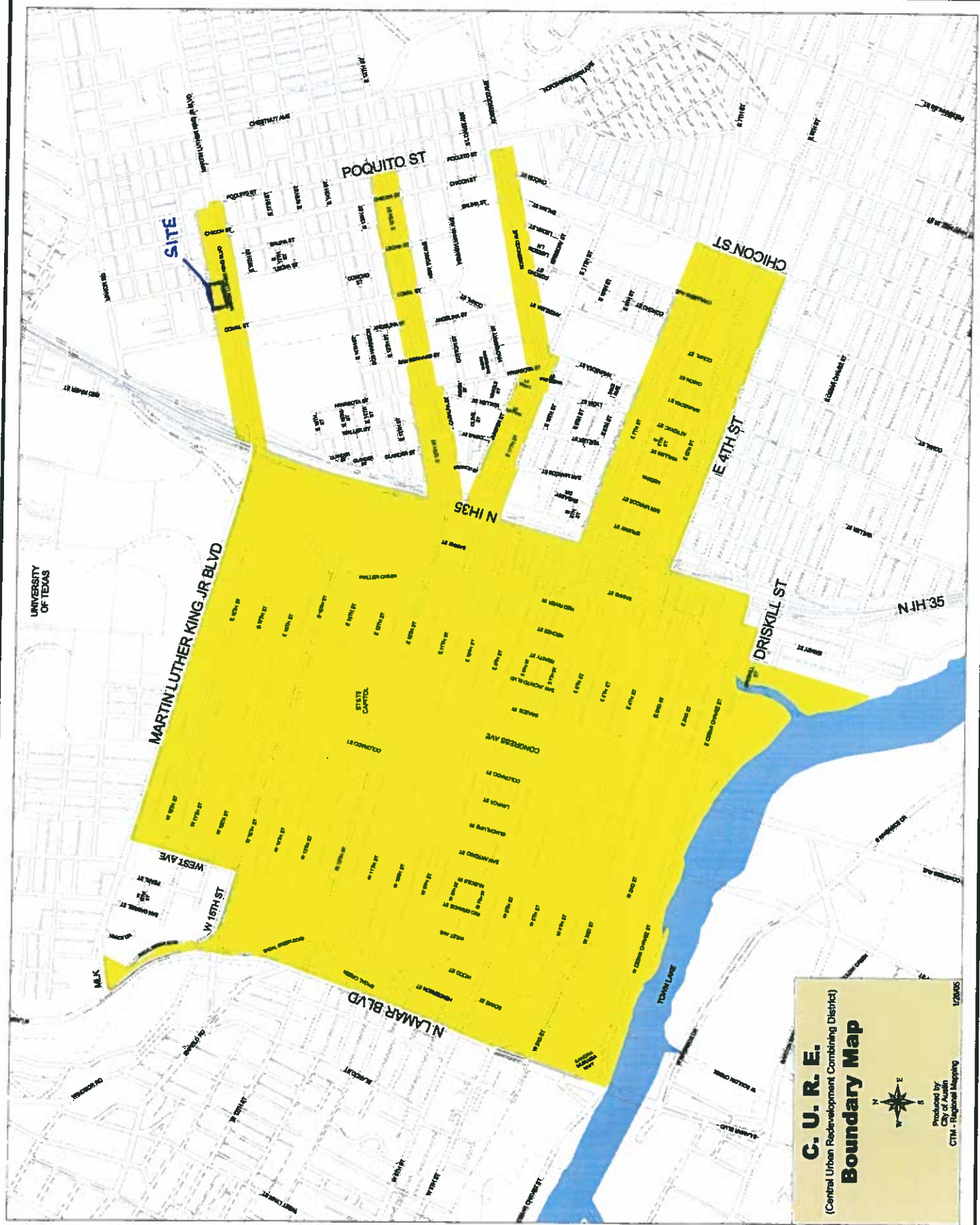
Conclusions

1. The neighborhood traffic analysis was triggered because the projected number of vehicle trips generated by the project exceeds the vehicle trips per day generated by existing uses by at least 300 trips per day, and the project has access to a local or residential collector street where at least 50 percent of the site frontage has an SF-5 or more restrictive zoning designation.
2. Currently, Concho and Leona Streets operate at a desirable level and will continue to operate at a desirable level with the addition of site traffic from the proposed development.
3. Concho St is considered to be in substandard condition and the applicant will need to acceptably upgrade the street at the time of site plan if access is proposed.
4. Staff recommends that this site be limited through a conditional overlay to 2,000 trips per day.

If you have any questions or require additional information, please contact me 974-3428.


Amber Mitchell

Senior Planner – Watershed Protection Development Review Department



C. U. R. E.
(Central Urban Redevelopment Encompassing District)
Boundary Map

Produced by
City of Austin
CTM - Regional Mapping

1/2005



Austin, Texas
SEPTEMBER 30 2008

March 10, 2009

VIA E-MAIL

Mayor and Members of the City Council
PO Box 1088
Austin, Texas 78767

Re: Zoning Case C14-2008-0099 for the properties located at 1600-1606 E. MLK Blvd.
SF-3-NP to LR-MU-V-CO-CURE-NP—Recommended by City Staff, the Planning
Commission and the Blackland Neighborhood Association

Dear Mayor and Members of the City Council:

On Thursday, March 12, 2009, this zoning case will be presented for third reading. The purpose of this letter is to provide an update as to activity occurring since the second reading.

On the occasion of the second reading, some questions were raised on two issues:

Issue 1. Whether the Blackland Neighborhood Association supports the requested base zoning (LR-MU-V-CO-CURE-NP) even if certain height/set-back variances are not obtained, in which case the increased affordable rental housing component (including some profit-sharing) set forth in the Zoning & Development Agreement would not be implemented.

To clarify the Blackland Neighborhood Association's position on this point, Alan Hampton, President of the Blackland Neighborhood Association, wrote to each of you and stated unequivocally that the Blackland Neighborhood Association supports the requested re-zoning with or without the height/set-back variances ever being obtained.

Issue 2. Whether an alternative affordable housing component for the project was enforceable by the Blackland Neighborhood Association.

In order to address this issue, the applicant and the Blackland Neighborhood Association have agreed upon, executed and recorded an additional Restrictive Covenant guaranteeing a baseline/minimum rental affordable housing component for the project for forty (40) years even if the affordable housing requirement contained in the Zoning & Development Agreement becomes inoperative because the height/set-back variances are not obtained. The Restrictive Covenant provides:

Mayor and Members of the City Council
March 10, 2009
Page 2

1. Ten Percent (10%) of the habitable residential square footage of the project will be made available as affordable rental units for families whose income level is at the sixty percent (60%) Median Family Income level.

2. The affordable units will not be clustered in one location in the project but will be intermingled with the other residential units in the project.

3. The Blackland Neighborhood Association is designated an enforcement party and is entitled to the recovery of its attorney's fees and costs incurred in any successful enforcement action that it undertakes.

A copy of the recorded Restrictive Covenant is attached.

We hope that you will agree that the project's commitments combined with the support of the Blackland Neighborhood Association, arrived at after 15 months of cooperation, negotiation and compromise has resulted in a project that offers benefits to all. We appreciate your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Jerry L. Harris". The signature is written in a cursive, slightly stylized font.

Jerry L. Harris

CC: Robert Heil
Alan Hampton
Carter Shanklin
Jerry Diepenbrock
Ryan Diepenbrock

March 9, 2009

VIA E-MAIL AND HAND DELIVERY

Council Member Lee Leffingwell
Council Member Mike Martinez
PO Box 1088
Austin, Texas 78767

Re: Zoning Case C14-2008-0099 for the properties located at 1600-1606 E. MLK Blvd.
SF-3-NP to LR-MU-V-CO-CURE-NP

Dear Council Member Leffingwell and Council Member Martinez,

Thanks again for taking time to meet with me, Carter Shanklin, Ryan Diepenbrock, representing the applicant, and Roy Cipple, representing the Blackland Neighborhood Association, on February 5, 2009. We all appreciate your willingness to review the re-zoning for this project which is recommended by the Planning Commission and is supported by the Blackland Neighborhood Association.

As you recall, pursuant to the project's Zoning & Development Agreement with the Blackland Neighborhood Association, the Blackland Neighborhood Association is supporting the re-zoning change whether or not certain height/set-back variances are eventually obtained. In the Zoning & Development Agreement, the project committed to certain affordable rental housing requirements for forty (40) years and certain profit-sharing with the Blackland Community Development Corporation if the height/set-back variances were obtained.

The project has now entered into a Restrictive Covenant with the Blackland Neighborhood Association guaranteeing a baseline/minimum rental affordable housing component for the project for forty (40) years even if the affordable housing requirement contained in the Zoning & Development Agreement becomes inoperative because the height/set-back variances are not obtained. The Restrictive Covenant has been executed by the owner of the land and the Blackland Neighborhood Association. It has been recorded in Document No. 2009034871, Official Public Records of Travis County, Texas. The first attachment to this letter is a copy of this Restrictive Covenant. The Restrictive Covenant provides that:

Council Member Lee Leffingwell
Council Member Mike Martinez
March 9, 2009
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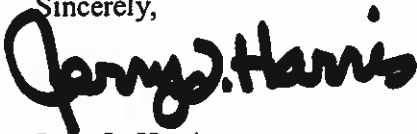
1. **Ten Percent (10%) of the habitable residential square footage of the project will be made available as affordable rental units for families whose income level is at the sixty percent (60%) Median Family Income level.**
2. **The affordable units will not be clustered in one location in the project but will be intermingled with the other residential units in the project.**
3. **The Blackland Neighborhood Association is designated an enforcement party and is entitled to the recovery of its attorney's fees and costs incurred in any successful enforcement action that it undertakes.**

The second attachment to this letter is a copy of the most recent letter from Alan Hampton, President of the Blackland Neighborhood Association, to the City Council expressing the Blackland Neighborhood Association's unequivocal support for the re-zoning regardless of the outcome of the height and setback variances that the project will be seeking.

Finally, the third attachment to this letter is a copy of a letter of support for the re-zoning from Michael Garrison, who is a 5-year member of the Blackland Neighborhood Association, is a neighborhood resident and is a Professor of Architecture at the University of Texas. Professor Garrison has long been involved in urban planning and green energy issues.

We hope that you will agree that the project's commitments combined with the support of the Blackland Neighborhood Association, arrived at after 15 months of cooperation, negotiation and compromise has resulted in a project that offers benefits to all. We appreciate your time and consideration.

Sincerely,



Jerry L. Harris

Enclosures

cc: Robert Heil, City of Austin (Via e-mail)
Alan Hampton, President of Blackland Neighborhood Association (Via e-mail)
Carter Shanklin (Via e-mail)
Jerry Diepenbrock (Via e-mail)
Ryan Diepenbrock (Via e-mail)
Nancy Williams (Via e-mail)
Andrew Moore (Via e-mail)



RESTRICT 200903487

4 PGS

2/11/09

RESTRICTIVE COVENANT

ORIGINAL
FILED FOR RECORD

STATE OF TEXAS §
COUNTY OF TRAVIS §

WHEREAS, E-MLK Properties, L.L.C., a Texas limited liability company ("Owner") is the owner of Lots 1, 2, 3 and 4, Block 2, C.R. Johns and Co. Subdivision of Outlot No. 45, Division "B", located in Travis County, Texas according to the map or plat thereof of record in Volume 1, Page 3, Plat Records of Travis County, Texas (the "Property"). The Property is locally known as 1600, 1602, 1604 and 1606 East Martin Luther King Jr. Boulevard, Austin, Texas, and

WHEREAS, the Blackland Neighborhood Association has as its members owners and residents of property located within the boundaries of the Blackland Neighborhood Association as reflected in the files of the City of Austin, Texas, and

WHEREAS, the Blackland Neighborhood Association is organized and operates as an advocate to various governmental agencies of the interests of owners and residents of property located within the boundaries of the Blackland Neighborhood Association, and

WHEREAS, the Property is located within the boundaries of the Blackland Neighborhood Association, and

WHEREAS, Owner has applied to the City of Austin, Texas for a zoning change and neighborhood plan amendment for the Property in Case Numbers NPA-2007-0012.02 and C14-2008-0099 (collectively, the "Zoning Application"), and

WHEREAS, the Zoning Application requests (i) that the zoning on the Property be changed from Single-Family Residence-3-Neighborhood Plan Combining District (SF-3-NP) to Neighborhood Commercial-Mixed Use-Vertical Mixed Use Building-Conditional Overlay-Central Urban Redevelopment District-Neighborhood Plan Combining District (LR-MU-V-CO-CURE-NP) and (ii) that the Upper Boggy Creek Neighborhood Plan be amended to designate the Property for "Neighborhood Mixed Use", and

WHEREAS, the Blackland Neighborhood Association supports the approval of the Zoning Application, and

WHEREAS, the parties hereto want to set forth their agreement as to what the baseline/minimum affordable housing requirement will be for the Property in the event the affordable housing provisions in that certain Zoning and Development Agreement (the "Zoning and Development Agreement"), dated December 11, 2008, to which the Blackland Neighborhood Association and PSW Jacaranda LLC are parties, do not become operative, and

WHEREAS, Owner and Blackland Neighborhood Association have agreed that the Property should be impressed with certain covenants and restrictions running with the land which reflect the above agreements.

NOW THEREFORE, Owner, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid to Owner by Blackland Neighborhood Association, the receipt and sufficiency of which is hereby acknowledged by Owner, does hereby agree with the following with respect to the Property, said agreement to be deemed and considered as a covenant running with the land which shall be binding on Owner, its successors and assigns:

1. **Affordable Housing Requirement.** For forty (40) years from the date a certificate of occupancy is issued for a residential project located on the Property, ten percent (10%) of the habitable residential square footage shall be rental units (the "Affordable Units") available to families whose income level is at the sixty percent (60%) Median Family Income level ("MFI"). Owner shall have the right to designate the location of all of the Affordable Units at Owner's sole and absolute discretion; provided however the Affordable Units shall not be clustered in one location in the residential project but will be spread out and intermingled with the other residential units in the project.
2. **Relationship to Zoning and Development Agreement.** This Restrictive Covenant does not supersede or replace the Zoning and Development Agreement but provides mandatory baseline/minimum affordable housing obligations in the event the affordable housing provisions in the Zoning and Development Agreement do not become operative under the terms and conditions set forth in the Zoning and Development Agreement.
3. **Termination In the Event the Zoning Application is Denied.** In the event the Zoning Application is denied by the Austin City Council, this Restrictive Covenant shall automatically terminate and thereafter be null and void. If requested to do so by Owner, the Blackland Neighborhood Association shall execute a recordable document acknowledging such termination.
4. **Enforcement of Restrictive Covenant.** The terms and conditions of this Restrictive Covenant may be enforced by (i) the president or the board of directors of Blackland Neighborhood Association or (ii) the president or the board of directors of any successor association to Blackland Neighborhood Association. Enforcement actions may be brought only after written notice of violations have been mailed by US certified mail, return receipt requested, to Owner, its successors or assigns and only if the notice violations have not been cured within ninety (90) days after the receipt of said notice by Owner, its successors or assigns. In the event a party bringing suit for enforcement of this Restrictive Covenant prevails in the enforcement suit, said party shall be entitled to recover their reasonable attorney's fees and their costs of court.
5. **Modification, Amendment or Termination.** Except for the termination provided for in paragraph 3 above, the terms and conditions of this Restrictive Covenant may be modified, amended or terminated only by joint action of the Board of Directors of Blackland Neighborhood

Association (or any successor organization to Blackland Neighborhood Association) and the Owner of the Property, its successors and assigns.

Executed as indicated below.

OWNER:

E-MLK Properties, L.L.C., a Texas limited liability company

By:

Jerry T. Springer, Manager

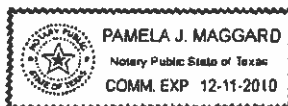
Blackland Neighborhood Association

By:

Alan Hampton, President

STATE OF TEXAS
COUNTY OF TRAVIS

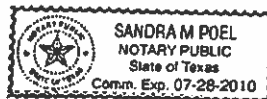
This instrument was acknowledged before me on the 25th day of February, 2009, by Jerry T. Springer, Manager of E-MLK Properties, L.L.C., a Texas limited liability company, on behalf of said limited liability company.



Pamela J. Maggard
Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on the 5th day of March, 2009, by Alan Hampton, President of Blackland Neighborhood Association, on behalf of said neighborhood association.



Sandra M. Poel
Notary Public, State of Texas

AFTER RECORDING RETURN TO:
Jerry L. Harris



RESTRICT 2009034871

Brown McCarroll, LLP
111 Congress, Suite 1400
Austin, TX 78701

Return

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2009 Mar 05 03:45 PM 2009034871

GONZALES \$20.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

From: Blackland Neighborhood Association [REDACTED]
Sent: Thursday, February 05, 2009 10:33 AM
To: Ryan Diepenbrock
Cc: Carter Shanklin; alan.hampton [REDACTED]; Michael Garrison; Jerry Diepenbrock
Subject: Re: MLK property

Dear Councilmember,

Good Morning,

I am writing to you once again on behalf of the Blackland Neighborhood Association. As an active member of that association for the last several years, and as the newly elected president of the association, I have been actively involved in the negotiations with the developers for over a year now, and have been asked by the developers to clarify the associations position.

We have spent a great deal of time and effort on this issue, working for over a year to find common ground between very different visions for this property and our neighborhood. At times the discussions were a little heated, but both sides negotiated in good faith. I have seen a letters from neighbors claiming intimidation and lies from the developers and from BCDC, but it simply is not true in either case. The parties on both sides presented their strongest arguments and glossed over the weaknesses, and at times puffed up their chests to show their determination to get their way, but the neighborhood remained determined throughout to work until the best solution for us was reached. This compromise you are voting on may not be what the BCDC wanted, or what the developers wanted, but it is what the neighborhood wants. Specifically in regards to the letter from Ora Houston, I would mention that Ora is a valuable and cherished voice in our neighborhood, but she has not participated in the neighborhood association for over a year now and is not in a position to describe the negotiations or the negotiators.

As to the zoning case itself, the neighborhood association understands and has discussed the fact that zoning and the variances are separate issues to be denied or granted by separate bodies. We voted as an association a long time ago (about a year) to seek Mixed use development on this property. With the UT stadiums and other properties so close, and the new rail station down the road, this is one of the best locations for more intense development in our neighborhood. Our desire to see mixed use here was mixed with worry about some of the related impacts of that development, but all of these issues have been negotiated to our satisfaction. WE APPROVE OF THE COMPROMISE IN FRONT OF YOU.

I am personally excited to see the actual zoning ordinance that Councilmember Leffingwell has been working on. Moving these restrictions from the separate contract into the zoning ordinance itself helps remove some of my fears about enforcing the contract by giving our special considerations the weight of zoning. We support this zoning change, WITH OR WITHOUT the variances. We will still support the variances, as we would like to see all parking underground, and the variances provide a means of allowing that, but that is icing on the cake. All of the major sticking points that were worked out with so much time and effort over the last year, are addressed even without the variances. Traffic in the neighborhood has been lessened by moving the main site access to MLK. Height on the Leona side of the site will be reasonable with or without

the variance. Affordable housing has been addressed, and while BCDC still desires more, some feel that this is mitigated by the current concentration affordable housing already in the neighborhood - we already have more affordable housing, owned by a non-profit and not subject to property taxes, than 99% Austin's neighborhoods. Our commitment to affordable housing remains strong, but the majority of the neighbors felt that the subject is adequately addressed in the agreement.

Once again, our support of this zoning is not in any way tied to approval or rejection of the variances, and we request that council support our vision for our neighborhood by passing this zoning. We would also like to give a very deep felt "Thank You" to council and staff, particularly Councilmember Leffingwell, for your interest and hard work in making sure that our neighborhood's interests are protected. We appreciate this more than you know.

Sincerely,

Alan Hampton

President

Blackland Neighborhood Association

cc Councilmember Leffingwell

Councilmember Martinez

zoning case at 1600 MLK

From:

mgarrison@math.texas.edu

Sent: Thu 2/05/09 2:31 PM

lee.leffingwell@ci.austin.tx.us; mkie.martinez@ci.austin; laura.morrison@ci.austin.tx.us;

To: sheryl.cole@ci.austin.tx.us; brewster.mccracken@ci.austin.tx.us;

matt.watson@ci.austin.tx.us

Cc: mgarrison@math.texas.edu; alan.hampton@ci.austin.tx.us; carter_shanklin@ci.austin.tx.us

Dear Members of the Council,

I write as a five year resident of the Blackland Neighborhood to express my support for the proposed zoning change at 1600 MLK.

As a member of the Land Use committee of the Blackland Neighborhood Association I have along with others worked for over 14 months in good faith with the project developers on modifications to their proposal for the property located in the 1600 block of MLK. After many meetings with the developers they agreed to most of our neighborhood concerns including a compromise on the maximum height, limiting the height along Leona, limiting traffic, limiting the access and egress to the project via Leona, agreeing to at least a 3 star green building rating, providing at least 6 affordable housing units, and providing up to \$100,000 as a donation to the Blackland CDC for affordable housing. They have also agreed to make these conditional overlays part of the deed restrictions and/or zoning so that the provisions would be enforced on the property even if they were not successful in receiving needed variances from the compatibility commission prior to their moving forward on the project. Bo McCarver, the chair of our Land Use committee was the lead neighborhood negotiator with the developers and reached an agreement that the Land Use committee and the Blackland Neighborhood Association approved.

Because Bo McCarver and other members of the Blackland CDC have been the primary negotiators for the Blackland Association Land Use committee, I do not pretend to understand why they have decided now to oppose the agreement. They have expressed a concern about rising property values and rising taxes. The solution I believe is in tax abatement through Tax Increment Financing (TIF) championed by Representative Eddie Rodriguez. Stopping all growth in East Austin reduces the value of East Austin property and the equity that long time residents of East Austin have built up in their property.

The Blackland Neighborhood Association has voted that the best use of this property should be Mixed Use development. The 1600 block of MLK is located on a major transit corridor, MLK near the UT baseball stadium, is on the east side of Leona in area dominated by University of Texas Properties. If you can't build a vertical mixed use project here that is supported by the neighborhood association where in the City could you build one?

Infill development at a greater density in mixed use vertical zoning provides more inner city affordable housing units and is an alternative to sprawl. These kinds of mixed use developments along transit corridors create a more dense, walkable, vibrant and ultimately sustainable city fabric. This image of the future is the alternative to a deteriorating central city with ever expanding sprawl.

I urge you to consider approving this zoning change proposal.

Kind Regards,

Michael Garrison
2103 East 22nd Street
Austin, Texas 78722

From: Potter, David [mailto:David.Potter@ci.austin.tx.us]
Sent: Friday, October 31, 2008 4:43 PM
Subject: Our meeting today

Hi, guys --

Thanks for coming in to visit.

First of all, I'm attaching two spreadsheets that may be helpful in fleshing out some numbers. One is for ownership and the other for rental. If you need any tips on the use of these, let me know. Click on the different colored tabs to go to different sheets within each document.

Next, I'll restate some of the figures we talked about. The per-project limit for non-profits is \$2 million. For for-profit organizations, the limit per project is \$1 million. These limits apply to acquisition, rehab, and new construction.

In addition, rehab and new construction projects have per-unit limits. For-profits: \$40,000 per unit in a multi-residence structure. Non-profits: \$60,000 per unit.

Another point brought up was that our funding can only be used on units that will serve folks at 50% MFI or less, so if Blackland is considering using these as rentals, they could not be rented to folks at 60% MFI. Currently, the rent limit for 50% MFI would be (including utilities) \$666 for a 1BR and \$800 for 2BR. Blackland will need to re-work their numbers to see if it is still feasible at 50% MFI.

I checked TCAD and the 25 properties listed as being owned by Blackland CDC are totally exempt from property tax, and I see no reason why any units purchased in this new development would be treated any differently by the Appraisal District. Given that Blackland's properties are exempt, then there would be no need for AHFC to have to acquire and then lease the units back to Blackland to make them tax-exempt.

We talked about projects being located in areas of higher opportunity with respect to education, transportation, health care, etc. The Blackland Neighborhood is in an area that would be considered one of the highest areas of opportunity and would get the maximum number of points on that particular criterion.

Also, I mentioned the idea of forming a partnership of some type with Blackland CDC for these 6 or more units. This would provide access to construction financing up to \$60K per unit as well as funds to acquire the units, rather than only having funds available at the end for acquisition. One example of a non-profit/for-profit partnership is one between Guadalupe Neighborhood Development Corporation (Mark Rogers, Exec. Dir.) and KRDB (Krager-Robertson-Design-Build) to develop what they are calling Solutions Oriented Living (SOL) development.

I hope this information is helpful, and I look forward to visiting with you both again.
DP

David Potter
Housing Development Manager
City of Austin/Austin Housing Finance Corp.
P. O. Box 1088
Austin, TX 78767-1088
(physical address: 1000 East 11th St., 2nd Floor, Austin, TX 78702)
512-974-3192; 512-974-1048 (fax)

Blackland Community Development Corporation

The Dream starts here...

December 11, 2008
2005 Salina Street
Austin, Texas 78722
512-474-6009
bmccarver@austin.rr.com

Mayor Will Wynn and Councilmembers
City of Austin
P.O. Box 1088
Austin, TX 78701

Ref.: Rezoning of 1600 – 1606 MLK

Dear May Wynn and Councilmembers:

After more than a year of deliberations with Jacaranda Investments, the applicants for rezoning 1600 – 1606 MLK, the Blackland Neighborhood Association has voted to enter into the attached agreement and endorse the rezoning. Compromises have been made by all parties concerning traffic, parking, compatibility and affordable housing.

The compromises compel the Blackland Community Development Corporation (BCDC) to withdraw its position on the valid petition. The BCDC board is split on this issue with several board members continuing objections to the low amount of affordable housing offered, particularly in light of the potential loss of nearby affordable units by marginal homeowners who will absorb increased taxes on their lots. The majority of the board accepts the compromise, however, in light of the uncertain economy and increased construction costs.

I have talked with Dr. June Brewer, also a signer of the petition, who withdraws her position. Mr. Milton Gooden maintains his opposition to the project and his position on the valid petition. I understand from Robert Heil that Mr. Gooden controls 21 percent of the property within 200 feet of the proposed rezoning.

We appreciate the efforts of all parties to reach this compromise. It appears as if this item will be late in the Council's agenda -- if it is heard after 6 PM I will not be able to participate. Thank you for your consideration.

Sincerely,



Bo McCarver, Ph.D., Chair
Blackland Community Development Corporation

CC: Alan Hampton, President, Blackland Neighborhood Association
Ryan Diepenbrock, Jacaranda Investments
Robert Heil, Senior City Planner

Zoning & Development Agreement

For the properties commonly known as: 1600, 1602, 1604 & 1606 E. MLK Jr. Blvd (the "Properties"), subject to the Upper Boggy Creek Neighborhood Plan and in the boundaries of the Blackland Neighborhood Association.

The purpose of this agreement is to detail base zoning designations, zoning modifications, height compatibility variances and affordable housing commitments that will govern the development that can take place on the properties at 1600 – 1606 E. MLK Blvd (the "Agreement"). The Agreement reflects extensive direct negotiation between the developer, PSW Jacaranda, LLC (PSW), the Blackland Neighborhood Association and the Blackland Community Development Corporation.

Zoning

1. Base Zoning: LR-V-MU-CO-NP-CURE
2. Modifications to base zoning per existing CURE Overlay

Height:

- a. For the retail development portion of the site, the maximum height shall be 3 stories or 40 feet in accordance with the base zoning height limitations.
- b. For the residential development portion of the site, a maximum height of 4 stories or 50 feet shall be allowed.

Commercial Design Standards:

The ground-floor commercial space and glazing requirements will be waived in favor of residential space.

Dimensional Standards:

The Properties shall not be subject to or limited by the dimensional standards applicable to the base zoning district as listed below:

- a. Minimum site area requirements
- b. Maximum floor area ratio
- c. Maximum building coverage
- d. Minimum street side yard setback and interior yard setback
- e. Minimum front yard setback provided it is 30 feet from the centerline of the street to ensure adequate Fire Department access

Impervious Coverage:

- a. Impervious coverage shall be limited to a maximum of 95%
- b. The total building footprint for structures built above grade shall be limited to a maximum of 80%
- c. Courtyard areas, landscaping and other common grounds will cover at least 10% of the site
- d. Sidewalks, driveways, surface parking and access, etc. will cover the remaining area of the site

3. Conditional Overlays on base zoning

- a. The Commercial or Retail space shall comprise no less than 1,000 square feet and no more than 2,499 square feet inclusive of exterior seating areas. The Commercial or Retail space shall be located on the ground floor of the southeast corner of the site.

- b. A 3-Star Austin green building minimum rating is required
- c. Traffic and Access:
 - 1. The Properties shall be limited to 2,000 trips per day
 - 2. Parking garage access to the Properties will be from Martin Luther King Jr. Blvd
 - 3. Retail surface parking access to the Properties will be from Leona
- d. The maximum Residential Units that can be built under a combined site plan shall be limited to 66

Compatibility Variance

In order to implement the above height allowances a compatibility waiver from the Board of Adjustments will be necessary. All parties agree that approval of this height and setback compatibility variance is necessary to this Agreement and the Agreement is void without it.

Affordable Housing

- a. A minimum of 6, two-bedroom rental units available to income levels of 60% MFI will be provide by PSW for a minimum of forty (40) years with or without the assistance of funds from non-profit associations or City, State or Federal affordable housing monies. PSW agrees to apply for those affordable housing funds the development does qualify for to attempt to bring the qualifying MFI down to less than 60%. PSW agrees that these affordable units will not be clustered in one location but instead inter-mingled with all other similar units. As rental units, the unit finish out (fixtures, appliances, trim, flooring, etc) is not required to be at the same level as the for-sale units.
- b. PSW agrees to donate to the Blackland Community Development Corporation 75% of the profits from the sale of all units over 59 that are built. This donation will not be less than \$100,000, regardless of how many units above 59 are actually constructed. This donation will be made in four intervals of \$25,000 each when 25%, 50%, 75% and 100% of the residential units are sold and the transactions have closed. The method of calculating profits and actual costs incurred will be shared, in confidence, with the Treasurer of the Blackland Community Development Corporation by PSW at the time the profit determination is made. The total donation will be equal to 75% of the average profit realized on each unit times the number of total residential units constructed over 59, or \$100,000 which ever is greater. Therefore the final \$25,000 payment when 100% of the units are sold may be adjusted upwards if the profit calculation warrants. This donation must be used by the Blackland Community Development Corporation in a manner that benefits their affordable housing goals.

Agreements of the Parties:

PSW agrees to the base zoning, zoning modifications, conditional overlays, compatibility variance and affordable housing commitment and understands these will limit the development of the Properties as indicated above.

The Blackland Neighborhood Association agrees to the zoning, zoning modifications, conditional overlays, compatibility variance and affordable housing commitment and further agrees to provide both written and testimonial support to City Staff, Planning Commission, City Council and the Board of Adjustment in support of the agreed-to zoning, zoning modification, conditional overlays and height compatibility waiver request. In addition, the Blackland Neighborhood Association agrees to support applications made for City, State or Federal housing funds to be used to reduce the MFI of the affordable units from 60%.

This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, their respective successors and assigns.

This Agreement represents the entire Agreement among the parties with respect to the subject matter hereof and may not be amended except by an addendum set forth in writing and signed by each of the parties. If any

party is found to be in breach of this Agreement, that party shall be responsible for the other parties' costs of court, costs of service, and reasonable attorney's fees incurred in such legal proceedings.

Agreed to this 11 day of December 2008, by

J. Ryan Diepenbrock
J. Ryan Diepenbrock
PSW Jacaranda, LLC



STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me Hattie Jo Carter Notary Public, on this day appeared J. RYAN DIEPENBROCK (name), known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this 11th day of December, 2008.

Hattie Jo Carter
Notary Public, State of Texas

Alan Hampton
Alan Hampton
President
Blackland Neighborhood Association



STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me Hattie Jo Carter Notary Public, on this day appeared Bo McCarver (name), known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this 11th day of December, 2008.

Hattie Jo Carter
Notary Public, State of Texas

Bo McCarver
Bo McCarver
Blackland Community Development Corporation



STATE OF TEXAS §

COUNTY OF TRAVIS §

Before me Hattie Jo Carter Notary Public, on this day appeared Bo McCarver (name), known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this 11th day of December, 2008.

Hattie Jo Carter
Notary Public, State of Texas

RECEIVED

JUN 02 2008

Neighborhood Planning & Zoning

Petition

Date: June 2, 2008
File Number: C14-2008-0099

Address of Rezoning Request: 1600 - 1606 MLK Blvd.

To: Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest against any change of the Land Development Code which would zone the property to any classification other than SF-3.

We believe that the proposed height (55') and scale of the project are incompatible with surrounding properties and the general retail zoning requested by the developers will worsen traffic and parking problems in an area already badly congested. The developers have not offered sufficient affordable units or any firm plan to provide such units.

Signature

Printed Name

Address

Bo McCarver

Bo McCarver
for Blackland CDC

1719 Manor Rd
Austin Tx 78722

Milton Gooden

MILTON Gooden

11400 Circle Bend Drive
Austin TX 78758

June H. Brewer

JUNE H. Brewer

1909 Leona St
Austin Tx 78722

Date: June 2, 2008

Contact Name: Bo McCarver
Phone 474-6009

Petition

Date: June 2, 2008

File Number: C14-2008-0099

Address of Rezoning Request: 1600 – 1606 MLK Blvd.

To: Austin City Council

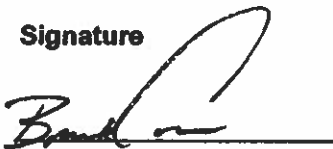
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We believe that the proposed height (55') and scale of the project are incompatible with surrounding properties and the general retail zoning requested by the developers will worsen traffic and parking problems in an area already badly congested. The developers have not offered sufficient affordable units or any firm plan to provide such units.

Signature

Printed Name

Address



Brooks Calavan

1801 Salina st Austin, TX 78702

Date: _____

Contact Name: Bo McCarver
Phone 474-6009

Petition opposing rezoning 1600 – 1606 MLK Case # C14-2008-0099

Computation of Square Footage within 200' of Property with rezoning request

Volume of lots in rezoning request

4 lots, 65' wide and 149' long = 38,740'

200' envelop around those four lots

$(149' + 200' + 200' = 549') \times (65' + 200' + 200' = 465') = 255,285$

Volume of properties within 200'. Minus properties included in rezoning request

$255,285 - 38,740 = 216,545'$

Volume of properties by protesting parties

02110916110000	Blackland CDC	1700 MLK	
43.3' + ½ 50' on Leona St. X 149' plus ½ 20' alley (68.3X159') =			10859.7'
02110715090000	Gooden, Winnie	1510 MLK Blvd.	
49' + ½ 10' alley X 191.43 + ½ 60' MLK + ½ 20' alley (59' X 231.43) =			13654.37'
02110715100000	Gooden, Winnie	1508 MLK Blvd.	
52' X 191.43 + ½ 60' MLK + ½ 20' alley (52 X 231.43) =			12034.56
02110715110000	Gooden, Winnie	1506 MLK Blvd.	
51.5 X 191.43 + ½ 60' MLK + ½ 20' alley (51.5 X 231.43) =			11918.65
02110715030000	Gooden, Winnie	1505 E. 20 th	
40.15' X 136.36 + ½ 20' alley + ½ 40' of 20 th St. (40.15 X 166.36) =			6679.35
02110715040000	Gooden, Winnie	1507 E. 20 th	
40.15' X 136.36 + ½ 20' alley + ½ 40' of 20 th St. (40.15 X 166.36) =			6679.35
20110715050000	Gooden, Winnie	1509 E. 20 th	
40.15' X 136.36 + ½ 20' alley + ½ 40' of 20 th St. (40.15 X 166.36) =			6679.35
02110916070000	Gooden, Winnie	1704 MLK	
43.3' X 149' + ½ 60' MLK + ½ 20' alley (43.3 X 189) =			8183.7
02110916080000	Gooden, Winnie	1702 MLK	
43.3' X 149' + ½ 60' MLK + ½ 20' alley (43.3 X 189) =			8183.7
02110916010000	Brewer, June Harden	1901 Leona	
02110916010001	Brewer, June Harden	1901 Leona	
(The above properties constitute one lot.)			
149 + ½ 20' alley + ½ 50' E. 20 th X 65' + ½ 50' Leona St. (184 X 90)			16560
02090901010000	Calavan Family Partnership	1710 E MLK Blvd	
43.3 + ½ 50' Leona St. X 147.67 + ½ 20' Alley + ½ 60' MLK (68.3 X 187.67) =			12817.9
02090901020000	Calavan Family Partnership	1703 E MLK Blvd	
43.3 X 147.67 + ½ 20' Alley + ½ 60' MLK (43.3 X 187.67) +			8121.67
02090901120000	Calavan Family Partnership	1705 E MLK Blvd	
43.3 X 147.67 + ½ 20' Alley + ½ 60' MLK (43.3 X 187.67) +			8121.67
Total volume of protesting lots			130502.85
% protesting lots (130502.85 / 216545)			60.3%

PETITION

Case Number:

C14-2008-0099

Date:

July 22, 2008

1600-1606 MLK BLVD

Total Area Within 200' of Subject Tract

293,335.68

1	<u>02-0909-0101</u>	<u>CALAVAN FAMILY PARTNERSHIP LTD</u>	<u>10,541.89</u>	<u>3.50% *</u>
2	<u>02-0909-0102</u>	<u>CALAVAN FAMILY PARTNERSHIP LTD</u>	<u>6,309.60</u>	<u>2.45% *</u>
3	<u>02-0909-0112</u>	<u>CALAVAN FAMILY PARTNERSHIP LTD</u>	<u>4,063.26</u>	<u>4.30% *</u>
4	<u>02-1107-1503</u>	<u>GOODEN WINNIE H MRS</u>	<u>176.74</u>	<u>0.06%</u>
5	<u>02-1107-1504</u>	<u>GOODEN WINNIE H MRS</u>	<u>2,787.06</u>	<u>0.95%</u>
6	<u>02-1107-1505</u>	<u>GOODEN WINNIE H MRS</u>	<u>4,790.75</u>	<u>1.63%</u>
7	<u>02-1107-1509</u>	<u>GOODEN WINNIE H MRS</u>	<u>12,397.91</u>	<u>4.23%</u>
8	<u>02-1107-1510</u>	<u>GOODEN WINNIE H MRS</u>	<u>12,726.85</u>	<u>4.34%</u>
9	<u>02-1107-1511</u>	<u>GOODEN WINNIE H MRS</u>	<u>12,066.48</u>	<u>4.11%</u>
10	<u>02-1109-1601</u>	<u>BREWER JUNE HARDEN</u>	<u>15,633.00</u>	<u>5.33%</u>
11	<u>02-1109-1607</u>	<u>GOODEN WINNIE H MRS</u>	<u>8,072.59</u>	<u>2.75%</u>
12	<u>02-1109-1608</u>	<u>GOODEN WINNIE H MRS</u>	<u>8,753.55</u>	<u>2.98%</u>
13	<u>02-1109-1611</u>	<u>BLACKLAND COMMUNITY</u>	<u>7,980.37</u>	<u>2.72%</u>
14				<u>0.00%</u>
15				<u>0.00%</u>
16				<u>0.00%</u>
17				<u>0.00%</u>
18				<u>0.00%</u>
19				<u>0.00%</u>
20				<u>0.00%</u>
21				<u>0.00%</u>
22				<u>0.00%</u>
23				<u>0.00%</u>
24				<u>0.00%</u>

Validated By:

Stacy Meeks

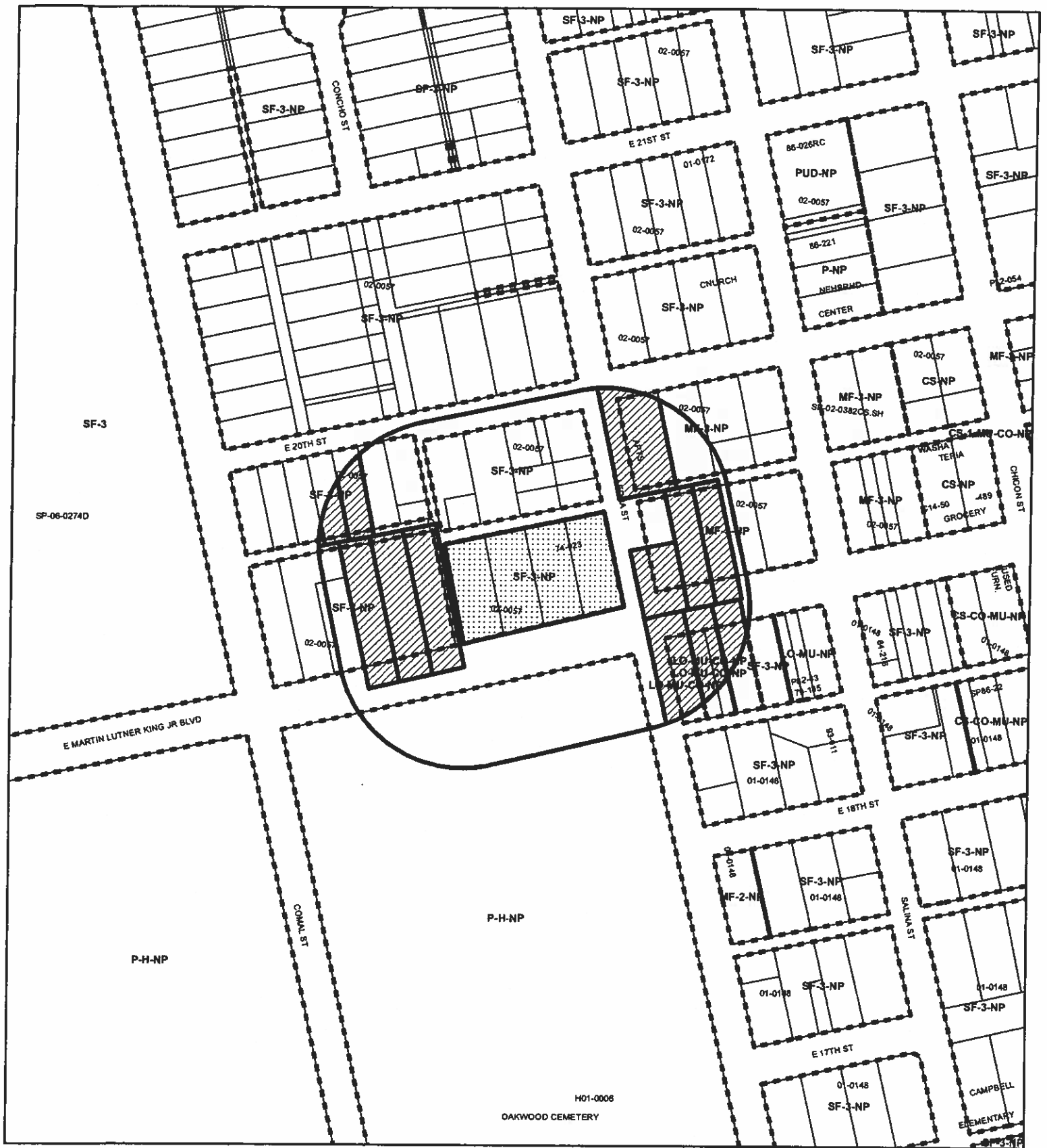
Total Area of Petitioner:

106,300.05

Total %

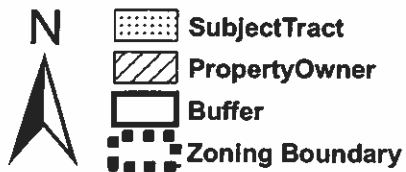
36.24% 26.39

* has indicated his intent to removed his name from the Petition



PETITION

CASE#: C14-2008-0099
 ADDRESS: 1600-1606 E MLK BLVD
 GRID: K23
 CASE MANAGER: J. HARDEN



1" = 200' OPERATOR: SM

This map has been produced by G.I.S. Services for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

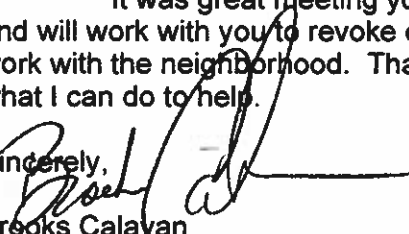
Ryan Diepenbrock

From: Brooks Calavan [brooks@missionitservices.com]
Sent: Saturday, July 26, 2008 10:39 AM
To: carter_shanklin@hotmail.com; diepo@earthlink.net
Subject: MLK

Carter and Ryan,

It was great meeting you both this morning. I definitely support you in your rezoning case and will work with you to revoke or remove my opposition now that I understand that you have tried to work with the neighborhood. That was the only reason I originally signed the petition. Let me know what I can do to help.

Sincerely,


Brooks Calavan
1801 Salina St.
Austin, Tx 78702
512-626-6547

RECEIVED

JAN 13 2009

Neighborhood Planning & Zoning

7/30/2008

Subject: MLK

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Sincerely,

Brooks Calavan
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Austin, Tx 78702
512-626-6547

7/31/2008

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website:

www.ci.austin.tx.us/development

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2008-0099

Contact: Robert Heil, 512-974-2330

Public Hearing:

July 22, 2008 Planning Commission

August 7, 2008 City Council

☐ I am in favor
☒ I object

Carlyn L Taylor
Your Name (Please print)

1800 East MLK Jr Blvd

Your address(es) affected by this application

Carlyn L. Taylor 7-16-08
Signature Date

Comments: This neighborhood should
be kept residential.
Therefore, the property in
question should remain
zoned as "single family".

If you use this form to comment, it may be returned to:

City of Austin

Neighborhood Planning and Zoning Department

Robert Heil

P. O. Box 1088

Austin, TX 78767-8810

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Case Number: C14-2008-0099

Contact: Robert Heil, 512-974-2330

Public Hearing:

July 22, 2008 Planning Commission

August 7, 2008 City Council

☐ I am in favor
☒ I object

Jewell Jackson
Your Name (please print)

1704 East 18th St. - Austin, TX 78702
Your address(es) affected by this application

Jewell Jackson *7-22-08*
Signature Date

Comments: *Single families developed the East Side. We would see the UT Tower & the Capital building. Now because of the Mansions & mixed use I & 3 other buildings ~~over~~ over shadow the view. Single families were ok when it was just a block. But now white developers want to take over the East side. High rise buildings take away the history of the East side. Why is it always the East side??*

If you use this form to comment, it may be returned to:

City of Austin

Neighborhood Planning and Zoning Department

Robert Heil

P. O. Box 1088

Austin, TX 78767-8810